IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1404 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHILD DEVELOPMENT PROJECT OFFICER - Petitioner(s)

Versus

RADHABEN KHAMJI BURIYA - Respondent(s)

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Appearance :

MR SUNIL S JOSHI for Petitioner No(s).: 1.

RULE SERVED BY DS for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 10/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 7th December, 1998 passed by the Labour Court, Godhra in Reference [L.C.G.] No. 195/96, whereby the Labour Court has directed the petitioner to reinstate the respondent on his original post with continuity in

service along with full back wages.

2. The short facts of the case are that the respondent was working purely on temporary basis with the petitioner. It is the case of the petitioner that the respondent had resigned from the service w.e.f. 31st July, 1994 and vide letter dated 8th August, 1984, the respondent was informed with regard to acceptance of her resignation.

2.1. Pursuant to that the respondent approach the Assistant Labour Commissioner, Godhra stating that the resignation was obtained by pressure on a blank paper. However, in the meantime, the respondent also approached the learned Civil Judge (S.D.) by filing Regular Civil Suit No. 47/96, whereby the Labour Court disposed of the application below Exh. 5 holding that the reliefs claimed by the plaintiff can be granted only after the evidence is over. The dispute was thereafter referred to the Labour Court for adjudication. The Labour Court after considering the case on merits, passed the impugned award. Hence, this petition.

3. Mr. Joshi learned advocate for the petitioner

has contended that except one notice dated 26th February, 1996, no notice has been served upon the petitioner and, therefore, the impugned order is required to be quashed and set aside.

4. I have heard the learned counsel for the parties and have perused the materials produced on record. From the impugned award of the Labour Court, it transpires that though the petitioner was served they have chosen not to remain present. Thus, the Labour Court has proceeded ex-parte. Therefore, the fact remains that the impugned award was passed without hearing the petitioner. Therefore, I am of the opinion that the petitioner is required to be given chance of hearing. Accordingly, the impugned award is required to be quashed and set aside and the matter is required to be remanded to the Labour Court for fresh decision.

5. In the premises aforesaid, on the facts and circumstances of the case, the impugned award dated 7th December, 1998 passed by the Labour Court, Godhra in Reference [L.C.G.] No. 195/96 is quashed and set aside. The matter is remanded to the Labour Court, Godhra for deciding afresh after hearing the petitioner.

6. It is clarified that the Labour Court, Godhra shall hear and decide the matter as early as possible and preferably within a period of one year from the date of receipt of writ of this order, without being influenced by the earlier order which is quashed in the present petition and also the present order, since the same has been passed without entering in to the merits of the case.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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